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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/625,219	07/22/2003	Burton Akira Hipp	PA2251US	8362
7590	01/18/2006		EXAMINER	
B. Noel Kivlin Meyertons, Hood, Kivlin, Kowert & Goetzl, P.C. P.O. Box 398 Austin,, TX 78767-0398			MIZRAHI, DIANE D	
			ART UNIT	PAPER NUMBER
			2165	

DATE MAILED: 01/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/625,219	HIPP ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	DIANE D. MIZRAHI	2165

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 7-22-03.

2a)  This action is **FINAL**.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

4)  Claim(s) 1-23 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 7-23 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claim(s) 1-6 are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on 22 July 2003 is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All   b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 5-12-005.

4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. 1-9-06.  
5)  Notice of Informal Patent Application (PTO-152)  
6)  Other: \_\_\_\_\_.

**III. DETAILED ACTION**

Claims 1-23 are presented for examination and are pending.

Claims 1-6 should be formally canceled by Applicant.

Claims 7-23 are examined below.

**Drawings**

The Examiner contends that the drawings submitted on July 22, 2003 are acceptable for examination proceedings. They are informal drawings.

**Claim Rejections - 35 USC . 101**

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 7-23 are rejected under 35 U.S.C. 101 because the claims are directed to a non-statutory subject matter, specifically, the claims are not directed towards the final result that is "useful, tangible and concrete

(See State Street, 149 F.3d at 1373-74 USPQ2d at 1601-02).

According to the New Guidelines of October 26, 2005, which states that "A claim limited to a machine or manufacture, which has a practical application, is statutory. In most cases a

claim to a specific machine or manufacture will have a practical application. See Alappat, 33 F.3d at 1544, 31 USPQ2d at 1557)... a specific machine to produce a useful, concrete, and tangible result and State Street, 149 F.3d at 1373-74 USPQ2d at 1601-02) .

(Interim Guidelines for Examination of Patent Applications for Patent Subject Matter Eligibility  
<http://rs6.net/tn.jsp?t=mdmd7pbab.0.kbg76pbab.p9qiibab.7440&p=  
http%3A%2F%2Fwww.uspto.gov%2Fweb%2Foffices%2Fpac%2Fdapp%2Fopl%2Fpreognitice%2Fguidelines101\_20051026.pdf> )

Therefore, Examiner believes that the above listed claims are nonstatutory.

Claim Rejections - 35 USC 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 7-8, 9-14, 18-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rich P. Testardi (U.S. Patent# 6,374,268 B1 and Testardi hereinafter) in view of Rao et al.

(U.S. Patent# 5,689,706 and Rao hereinafter).

Regarding Claims 7 and 8, Testardi teaches an application capable of generating filesystem operations (col 11, lines 47-57); a vnode layer configured to receive filesystem operations from the application (col 2, lines 12-24) and overally including system being configured to selectively route filesystem operations from the vnode layer (col 6, lines 3-35).

Testardi does not expressly teach a back filesystem and a front filesystem.

Rao teaches back filesystem and front filesystem (col 13, lines 12-41 and col 11, lines 17-25; col 13, lines 25-41 and col 11, lines 26-36).

It would have been obvious to a person of ordinary skill in the art at the time of Applicant's invention to modify the teachings of Testardi with the teachings of Rao to include back filesystem and a front filesystem with the motivation to improve speed (Rao, col 1, lines 46-50).

Regarding Claim 18, Testardi does not expressly teach ... two or more filesystems and is further configured to allocate and cache onodes.

Rao teaches two or more filesystems and is further configured to allocate and cache onodes (col 2, lines 13-33).

It would have been obvious to a person of ordinary skill in the art at the time of Applicant's invention to modify the teachings of Testardi with the teachings of Rao to include two or more filesystems and is further configured to allocate and cache onodes with the motivation to improve speed (Rao, col 1, lines 46-50).

Regarding Claim 19, Testardi teaches overlay filesystem is further configured to support a snapshot/restore module (col 9, lines 38-67 to col 10, lines 1-15).

Regarding Claims 9-14 are similar in scope to the rejected claims above and are therefore rejected as set forth above.

Claims 15-17 and 20-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rich P. Testardi (U.S. Patent# 6,374,268 B1 and Testardi hereinafter) and Rao et al. (U.S. Patent# 5,689,706 and Rao hereinafter) in view of Patel et al. (US Patent No. 6,918,113 B2 and Patel hereinafter).

Regarding Claims 15-17, Testardi and Rao does not expressly teach vnode triplet ... hash table.

Patel teaches vnode triplet ... (col 40, lines 1-56) hash table (col 38, lines 1-41) (Figure 28).

It would have been obvious to a person of ordinary skill in the art at the time of Applicant's invention to modify the teachings of Testardi and Rao with the teachings of Patel to include vnode triplet ... hash table with the motivation to save money (Patel, col 1, lines 48-63).

Regarding Claims 20 and 22-23, the claims are similar in scope to the rejected claims above and are therefore rejected as set forth above.

Regarding Claim 21, Testardi and Rao do not expressly teach header ... .

Patel teaches header ... (Figure 28).

It would have been obvious to a person of ordinary skill in the art at the time of Applicant's invention to modify the teachings of Testardi and Rao with the teachings of Patel to include header with the motivation to save money (Patel, col 1, lines 48-63).

Other Prior Art Made of Record

The prior art made of record and not relied upon is

considered pertinent to Applicant's disclosure. U.S. patents and U.S. patent application publications will not be supplied with Office actions. Examiners advises the Applicant that the cited U.S. patents and patent application publications are available for download via the Office's PAIR. As an alternate source, all U.S. patents and patent application publications are available on the USPTO web site (www.uspto.gov), from the Office of Public Records and from commercial sources. For the use of the Office's PAIR system, Applicants may refer to the Electronic Business Center (EBC) at http://www.uspto.gov/ebc/index.html or 1-866-217-9197.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Diane D. Mizrahi whose telephone number is 571-272-4079. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey Gaffin can be reached on (571) 272-4146. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9306 for regular communications and (703) 305-3900 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3900.



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Diane Mizrahi  
Primary Patent Examiner  
Technology Center 2100

January 9, 2005